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4 ABED FITYAN,  
5 Plaintiff,  
6 v.  
7 WORLD COURIER, INC., et al.,  
8 Defendants.

9 Case No. 24-cv-07034-AMO

10 **ORDER GRANTING MOTION TO  
REMAND**

11 Re: Dkt. No. 17

12 Plaintiff Abed Fityan commenced this employment discrimination action against  
13 Defendants World Courier, Inc., Cencora, Inc., Amerisourcebergen Drug Corporation,  
14 Amerisourcebergen Services Corporation, Amerisourcebergen Specialty Group, LLC, and Rina  
15 Savaiinaea in San Mateo Superior Court on August 26, 2024. ECF 1-1 (“Compl.”). Fityan asserts  
16 state law claims for (1) disability discrimination in violation of the Fair Employment and Housing  
17 Act (“FEHA”), (2) disability retaliation in violation of FEHA, (3) failure to provide reasonable  
18 accommodations in violation of FEHA, (4) failure to engage in the interactive process in violation  
19 of FEHA, (5) violation of the California Family Rights Act (“CFRA”), (6) race/national origin  
20 discrimination in violation of FEHA, (7) race/national origin retaliation in violation of FEHA,  
21 (8) failure to prevent discrimination and retaliation in violation of FEHA, (9) wrongful termination  
22 in violation of public policy, and (10) intentional infliction of emotional distress. *Id.* at 8-30. He  
23 served the corporate defendants with a copy of the summons and complaint on September 4, 2024.  
24 ECF 1 (“Notice of Removal”) at 3.

25 The corporate defendants removed the action to this Court on October 7, 2024, claiming  
26 diversity jurisdiction.<sup>1</sup> *Id.* Fityan moves to remand the action back to state court because, among

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28 <sup>1</sup> At the time of removal, Fityan, a California resident, had not yet served Savaiinaea, who is also a California resident. Notice of Removal at 5; Compl. at 3, 4.

1 other things, the corporate defendants' notice of removal is untimely and diversity jurisdiction is  
2 lacking.<sup>2</sup> ECF 17 ("Mot.") at 12-22; ECF 23 ("Reply") at 3-8. Fityan also seeks attorney's fees  
3 for the improper removal. Mot at 20-21; Reply at 8. The corporate defendants oppose. ECF 21  
4 ("Opp.").

5 Assuming, without deciding, that the notice of removal was timely, remand would  
6 nonetheless be appropriate because diversity jurisdiction is lacking. The corporate defendants  
7 invite the Court to reach a contrary conclusion, arguing that because they properly effected a "snap  
8 removal," the Court should disregard the citizenship of the individual defendant. *See* Notice of  
9 Removal at 5 ("[W]hile Plaintiff alleges that Defendant Rina Savaiinaea is 'a resident of the State  
10 of California' . . . , her citizenship is not relevant for purposes of diversity jurisdiction because she  
11 has not been served as of the date of this Notice of Removal."); Opp. at 10 ("[B]ecause Ms.  
12 Savaiinaea was not served as of the date of Defendants' removal, her citizenship is not relevant for  
13 purposes of 28 U.S.C. § 1441(b)(2).").

14 The corporate defendants' contention that their " 'snap' removal imbues this Court with  
15 removal jurisdiction" by rendering Savaiinaea's irrelevant citizenship, *see* Opp. at 10, is incorrect.  
16 A "snap removal" refers to "[t]he practice of circumventing application of the forum-defendant  
17 rule by removing before defendants are served . . ." *See Lam Sing v. Sunrise Senior Mgmt., Inc.*,  
18 No. C 23-00733 WHA, 2023 WL 3686251, at \*3 (N.D. Cal. May 26, 2023). But "the forum-  
19 defendant rule is irrelevant if there is simply no original jurisdiction in the first place." *Id.* The  
20 corporate defendants' emphasis on their snap removal is thus misplaced, as "[s]nap removal does  
21 not solve the fundamental problem of lack of complete diversity." *Id.* at \*2.

22 The corporate defendants next argue that even if Savaiinaea's citizenship were relevant,  
23 her being from California does not destroy diversity because she has been fraudulently joined.  
24 Opp. at 10-11. Not so. "Joinder is fraudulent if the plaintiff fails to state a cause of action against  
25 a resident defendant, and the failure is obvious according to the settled rules of the state." *Lam*  
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27 <sup>2</sup> With his briefs, Fityan also filed several objections to the evidence the corporate defendants  
28 submitted in support of the notice of removal and their opposition to the motion to remand.  
ECF 18, 24. Because remand is appropriate even when those materials are considered, Fityan's  
objections are **OVERRULED AS MOOT**.

1      *Sing*, 2023 WL 3686251, at \*2 (internal quotations, citation, and modification omitted). The  
2      corporate defendants contend that the sole claim Fityan asserts against Savaiinaea – for intentional  
3      infliction of emotional distress – is not viable because it is based on her supervisory actions alone.  
4      *Id.* at 11. According to the removing defendants, Fityan must allege some extreme or outrageous  
5      conduct by Savaiinaea separate and apart from mere supervisory conduct. *Id.* (citing *Light v.*  
6      *Dep’t of Parks & Recreation*, 14 Cal. App. 5th 75, 102 (2017)).<sup>3</sup>

7            This argument does not carry the removing defendants’ heavy burden to show, “by clear  
8      and convincing evidence” that “there is no possibility that [Savaiinaea] may be liable on the  
9      claims in the complaint.” *See Nieves v. Costco Wholesale Corp.*, No. 3:22-CV-00977-JD, 2022  
10     WL 5199904, at \*2, \*3 (N.D. Cal. Oct. 5, 2022). Fityan alleges that Savaiinaea summarily  
11     dismissed him, refused to provide accommodations without engaging in a good-faith, interactive  
12     process, that Savaiinaea forced Fityan to report for an in-person meeting during which he was  
13     terminated, while he has on medical leave and just days after he extended his leave of absence,  
14     and that Savaiinaea preferentially treated and favored Filipino employees and discriminated  
15     against non-Filipino employees by denying them overtime and certain assignments and selectively  
16     enforcing company policies. Compl. at 8. Fityan alleges that this conduct was outrageous and  
17     undertaken wrongfully, willfully, and/or intentionally to inflict emotional distress on him. Based  
18     on these allegations, “a state court possibly could find that plaintiff has established a cause of  
19     action for intentional infliction of emotional distress[,]” such that his naming of Savaiinaea as a  
20     defendant is not fraudulent. *See Calero v. Unisys Corp.*, 271 F. Supp. 2d 1172, 1178 (N.D. Cal.  
21     2003). Accordingly, the Court declines to disregard Savaiinaea’s citizenship on the theory that  
22     she was fraudulently joined.

23            When factoring in Savaiinaea’s citizenship, the diversity jurisdiction the corporate  
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<sup>3</sup> The removing defendants cite *Light* for the proposition that “[a] claim for intentional infliction of emotional distress requires extreme or outrageous conduct by the defendant herself; her ‘responsibility’ as a supervisor alone is insufficient.” 14 Cal. App. 5th at 102. But that case was decided at the summary judgment stage, *see id.* at 80, not under the “no possibility” standard, which the removing defendants must meet to establish fraudulent joinder.

1 defendants cite as the basis for removal does not exist. Fityan is a California resident and so is  
2 Savaiinaea. Compl. at 3, 4. While “residency and domicile for citizenship are not, strictly  
3 speaking, always the same,” the Court applies the “ ‘longstanding principle’ that ‘the place where  
4 a person lives is taken to be his domicile until facts adduced establish the contrary.’ ” *Boone v.*  
5 *FCA US LLC*, No. 21-cv-01591-JD, 2021 WL 5331440, at \*2 (N.D. Cal. Nov. 16, 2021) (quoting  
6 *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 614 (9th Cir. 2016)). Because no such facts have  
7 been offered here, the allegations in Fityan’s complaint are sufficient to establish California  
8 citizenship. And because Fityan and Savaiinaea are both California citizens, diversity does not  
9 exist. As Fityan alleges no federal claim in his complaint, the absence of diversity requires  
10 remand for lack of subject matter jurisdiction.<sup>4</sup>

11 For the reasons set forth above, Fityan’s motion to remand is **GRANTED**. The Clerk is  
12 instructed to remand this action to San Mateo County Superior Court and close the file in this  
13 matter. The Court finds that the corporate defendants lacked an objectively reasonable basis for  
14 removing the case to this Court. Indeed, one of the many cases on which the corporate defendants  
15 rely rejects the arguments made here about the effect of a snap removal – i.e., that “Defendants’  
16 ‘snap’ removal imbues this Court with removal jurisdiction.” *See Opp.* at 9-10 (citing *Lam Sing*,  
17 2023 WL 3686251, at \*3). In *Lam Sing*, the Court clearly rejected this view: “[t]o the extent that  
18 [defendant] argues snap removal can actually confer diversity jurisdiction where it otherwise  
19 would not exist, that argument is without merit.” *Lam Sing*, 2023 WL 3686251, at \*3. Given that  
20 the corporate defendants decided to nonetheless rely on their snap removal as a means to establish  
21 otherwise lacking jurisdiction, Fityan may file a motion for attorney’s fees in compliance with  
22 Civil Local Rule 54-5.

23 **IT IS SO ORDERED.**

24 Dated: January 27, 2025



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26 **ARACELI MARTÍNEZ-OLGUÍN**  
27 **United States District Judge**

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29 <sup>4</sup> Given the absence of diversity, the Court does not reach the parties’ remaining arguments on  
whether diversity jurisdiction exists or is lacking for other reasons.